

CHAPTER 2

~~RULES OF PRACTICE AND PROCEDURE APPLICABLE TO~~
~~HEARINGS IN CONTESTED CASES~~
CONTESTED CASE HEARINGS

Section 1. ~~Answer or appearance~~ Purpose and Scope.

~~(a) — The Director or Applicant shall promptly file a responsive pleading to the petition directed to and served upon the opposing party and the Council, not later than five days before the hearing date.~~

These rules are promulgated with the intent to utilize as much as practicable of the uniform contested case rules that the Office of Administrative Hearings adopted under W.S. 16-3-102(d). These rules shall govern all contested case proceedings before the Council.

Section 2. ~~Docket~~ Applicability of the Wyoming Rules of Civil Procedure.

~~(formerly Section 2(a)) — When a hearing is instituted, it shall be assigned a number and entered with the date of its filing on a separate page of a docket provided for such purpose. The Council shall establish a separate file for each such docketed case, in which shall be systematically placed all papers, pleadings, documents, transcripts, evidence and exhibits pertaining thereto, and all such items shall have noted thereon the docket number assigned, and the date of filing.~~

~~(Formerly Section 14(a)) The Wyoming Rules of Civil Procedure, insofar as the same may be applicable and not inconsistent with the laws of the state and these rules shall apply to matters before the Council. The Council shall conduct all contested case~~ hearings with reference to the Wyoming Rules of Civil Procedure. Section 25 of this chapter specifically incorporates Rules 4, 12(b)(6), 24, 25, 45, 52, 56, and 56.1 of the Wyoming Rules of Civil Procedure.

Section 3. ~~Motions~~ Informal Proceedings and Alternative Dispute Resolution.

(a) Parties to a contested case are encouraged to resolve the contested case through settlement, mediation, arbitration, or other means throughout the duration of a contested case. If the parties choose to engage in mediation or arbitration, they shall file a joint request for continuance pending outcome of the mediation or arbitration.

(b) With the consent of all parties, the hearing officer may assign a contested case to a mediating hearing officer on limited assignment for the purpose of nonbinding alternative dispute resolution methods. Such methods shall be conducted in accordance with the procedures prescribed by the mediating hearing officer.

(c) Parties shall promptly notify the hearing officer of all settlements, stipulations, agency orders, or other action eliminating the need for a contested case hearing. The hearing officer shall forward such notice to the Council. Upon such notice, the Council shall issue an order dismissing the case.

Section 4. ~~Order of Procedure at Hearings~~ Initiation of Contested Case.

- 50
51 ~~(a) — As nearly as possible, hearings shall be conducted in accordance with the~~
52 ~~following order of procedure:~~
53
54 ~~(i) — The presiding officer shall announce that the Council is open to transact~~
55 ~~business and call by docket number and title the case to be heard.~~
56
57 ~~(ii) — The parties will each be allowed an opening statement to briefly explain~~
58 ~~their position to the Council and outline the evidence they propose to offer together with purpose~~
59 ~~thereof.~~
60
61 ~~(iii) — Parties' evidence will be heard. Witnesses may be cross-examined by the~~
62 ~~opposing party or his attorney and by members of the Council and legal counsel for the Council.~~
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64 ~~(iv) — The presiding officer may offer any evidence necessary on behalf of the~~
65 ~~Council subject to cross examination.~~
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67 ~~(v) — The presiding officer may allow, in his discretion, evidence to be offered~~
68 ~~in any order.~~
69
70 ~~(vi) — The Council may allow, after service of copies on all parties of record,~~
71 ~~the direct testimony of a witness to be in writing, either narrative or question and answer form,~~
72 ~~upon the witness being sworn and identifying the written testimony. It may be received into the~~
73 ~~record as if read, in accordance with W.S. 9-4-108. The witness giving such testimony in writing~~
74 ~~shall be subject to cross-examination and such evidence shall be received into the record subject~~
75 ~~to a motion to strike. The written testimony must be served on all other parties in advance to~~
76 ~~allow a reasonable time to prepare cross-examination.~~
77
78 ~~(vii) — Closing arguments of the parties will be made in the manner set by the~~
79 ~~hearing officer.~~
80 ~~(viii) — Time for oral argument may be limited by the presiding officer.~~
81
82 ~~(ix) — The presiding officer may recess the hearing as required.~~
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84 ~~(x) — After all interested parties have been offered the opportunity to be heard,~~
85 ~~the presiding officer shall declare the evidence closed and excuse all witnesses. The evidence~~
86 ~~may be reopened at a later date, for good cause shown, by order of the Council upon motion by a~~
87 ~~party or on the Council's own motion.~~
88
89 ~~(b) — The presiding officer may, at his discretion, require parties to tender written~~
90 ~~briefs and set the time for filing such briefs.~~
91
92 ~~(c) — The presiding officer may declare that the matter is taken under advisement and~~
93 ~~that the decision and order of the Council will be announced at a later date.~~
94
95 ~~(d) — The Council may, at its discretion, appoint a presiding officer, who will then~~
96 ~~preside during the course of such hearing.~~
97 ~~(i) — The presiding officer shall, for purposes of that hearing, have all~~
98 ~~necessary powers normally vested in the Chairman.~~

(a) All persons requesting a contested case hearing or protesting a permit shall file the original written petition with the Council and serve additional copies to the Director of the Department and any other parties.

(i) A person initiating a contested case shall serve the petition by registered mail, return receipt requested. Thereafter, all service shall be proved in accordance with the Wyoming Rules of Civil Procedure.

(ii) Where a person is objecting to a permit, service of all documents shall include the permit applicant when serving the petition and all other pleadings and motions.

(b) The petition for hearing shall set forth:

(i) Name, phone number, electronic mail address, and physical address of the petitioner and, if applicable, the petitioner's attorney;

(ii) The action, decision, order, or permit upon which a hearing is requested;

(iii) A statement in ordinary but concise language of the specific allegations on which the petition is based, including references to the statute, rule, or order that the petitioner alleges has been violated, and

(iv) A request for hearing before the Council.

(c) The contested case shall be deemed commenced on the date of filing the petition with the Council, as long as the petition is served on each defendant within sixty (60) days of filing. If service is not made within sixty (60) days of filing, then the contested case shall be deemed commenced on the date when service is made.

(d) No responsive pleadings are mandatory prior to the prehearing scheduling conference.

Section 5. ~~Witnesses at Hearings to be Sworn~~ Filing and Service of Papers

~~(a) All persons testifying at any hearing before the Council shall stand and be administered the following oath or affirmation by the presiding officer:~~

~~"Do you swear (or affirm) to tell the truth, the whole truth, and nothing but the truth in the matter now before the Council, so help you God?"~~

~~(i) No testimony will be received from a witness except under oath or affirmation.~~

(a) In all proceedings, the parties shall file all original documents, pleadings, and motions with the Council and serve all other parties with true and correct copies of the particular document, pleading, or motion. The original and all copies shall be accompanied by a certificate of service. The Council shall maintain the complete original file, and all parties and the hearing officer shall be provided copies of all contested case documents, pleadings, and motions

148 contained therein.

149
150 (b) Filing and service under this rule shall be made by hand delivery, U.S. mail
151 transmittal to the last known address, or electronically uploaded to the relevant docket at
152 http://wyomingeqc.wyo.gov/. Where all parties have not consented to receive electronic service,
153 the party electronically filing shall otherwise serve the documents to the parties who have not
154 consented to receive electronic service. Parties may file by means other than those described in
155 this Section upon approval from the hearing officer.

156
157 Section 6. ~~Appearance~~ **Referral to Office.**

158
159 (a) Upon referral to the Office to conduct a contested case in accordance with W.S.
160 35-11-112(a), the Council shall transmit to the Office copies of appropriate documents reflecting
161 the dispute and the basis thereof, including any written challenge(s) initiating the contested case
162 and a reference to applicable law.

163
164 (b) The Council shall submit a transmittal sheet, on a form provided by the
165 Office, sufficiently identifying the contested case, including:

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167 (i) The name of the known parties and their attorneys or representatives;

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169 (ii) A concise statement of the nature of the contested case;

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171 (iii) Notification of any time limits for the setting of a hearing or entry of a
172 decision, location requirements, and anticipated special features or unique requirements; and

173
174 (iv) Certification by an authorized officer of the Council that all parties have
175 been properly served with a true and complete copy of the transmittal form.

176
177 Section 7. ~~Intervention~~ **Designation and Authority of Hearing Officer; Recusal.**

178
179 (a) The Chair may refer, assign, or designate a hearing officer to preside over
180 any contested case unless otherwise provided by law. When appropriate under applicable law
181 and at the Council's request, the hearing officer may provide a recommended decision.

182
183 (b) At any time while a contested case is pending, a hearing officer or Council
184 member may withdraw from a contested case by filing written notice of recusal or entering a
185 verbal notice of recusal into the record. As soon as the notice of recusal is entered, the recused
186 hearing officer or Council member shall not participate in the contested case.

187
188 (c) Any party may move for recusal of a hearing officer or Council member for
189 cause. Grounds for recusal include that the hearing officer or Council member:

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191 (i) Has been engaged as counsel for any party to the action prior to
192 being appointed as hearing officer;

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194 (ii) Has an interest in the outcome of the action;

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196 (iii) Is a spouse, child, grandchild, parent, grandparent, or other relative or

person who maintains a close familial relationship with a party;

(iv) Is a witness in the action;

(v) Is biased or prejudiced against the party or the party's attorney or representative; or

(vi) Any other ground provided by law.

(d) A motion for recusal shall be supported by an affidavit or affidavits of any person or persons stating sufficient facts and law to show the motion should be granted. Prior to a hearing on the motion, any party may file counter-affidavits. The motion shall be heard by the hearing officer or, at the discretion of the hearing officer, by another hearing officer appointed for the limited purpose of resolving the motion. If the motion is granted, the Council Chair shall immediately designate another hearing officer to preside over the contested case or shall excuse the hearing panel member(s).

(e) A hearing officer appointed from outside the Council members shall not be subject to a voir dire examination by any party.

(f) Subject to limitations imposed by the hearing officer, any party may be permitted to conduct a voir dire examination of a hearing panel.

Section 8. ~~General Hearing Rules~~ Appearances and Withdrawals.

~~(a) Every party shall be accorded the right to appear and testify in person or by counsel or other duly qualified representative. If testifying on behalf of another person or several persons, such person shall present to the hearing officer evidence he is a qualified representative thereof.~~

~~(b) Every person testifying shall, at the Council's discretion, be qualified prior to testifying. Such qualification will include ascertaining the residency, occupation, background, education, and expertise of said person.~~

~~(c) All parties shall have the right to respond and present evidence and argument on all issues involved.~~

~~(d) No person shall be required to report, inspect, or perform any investigative act except as authorized by law.~~

~~(e) All persons required to submit data or evidence shall be either entitled to retain the data or evidence or upon payment of a reasonable cost may procure a copy thereof.~~

~~(f) All irrelevant, immaterial, or unduly repetitious evidence may be excluded.~~

~~(g) Effect to the rules of privilege shall be given as recognized by law. Documentary evidence may be received in the form of copies of excerpts, if the original is not available. All copies are subject to being compared with the original.~~

- 246 ~~(h) — The presiding officer shall:~~
- 247
- 248 ~~(i) Administer oaths and affirmations.~~
- 249
- 250 ~~(ii) — Issue subpoenas.~~
- 251
- 252 ~~(iii) — Rule upon offers of proof and receive relevant evidence.~~
- 253
- 254 ~~(iv) — Take or cause to be taken depositions.~~
- 255
- 256 ~~(v) — Preside over the hearing and regulate its proceedings.~~
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- 258 ~~(vi) — Preside over and set the time for such pre-hearing conferences as he~~
- 259 ~~deems necessary.~~
- 260
- 261 ~~(vii) — Dispose of procedural requests. The presiding officer may be assisted by~~
- 262 ~~a representative of the Attorney General's Office when such assistance is deemed necessary.~~
- 263
- 264 ~~(viii) — The presiding officer shall officially open and officially close the~~
- 265 ~~hearing.~~
- 266
- 267 ~~(Formerly Section 6(a)) — Appearances and representation of parties shall be made~~
- 268 ~~as follows:~~
- 269 ~~—— (Formerly 6(a)(i)) An individual may appear and be heard in his own behalf~~
- 270
- 271 ~~—— (Formerly 6(a)(ii)) — A co-partnership may appear and be represented by a co-~~
- 272 ~~partner.~~
- 273
- 274 ~~—— (Formerly 6(a)(iii)) — A corporation may appear and be represented by a~~
- 275 ~~corporate officer or a full-time employee of said corporation.~~
- 276
- 277 ~~—— (Formerly 6(a)(iv)) — A municipal corporation or its Board of Public Utilities~~
- 278 ~~may appear and be represented by a municipal officer, a member of said Board or a full-time~~
- 279 ~~employee of said municipality or Board.~~
- 280
- 281 ~~—— (Formerly 6(a)(v)) — An unincorporated association may appear and be~~
- 282 ~~represented by any bona fide general officer or full-time employee of such association.~~
- 283
- 284 ~~—— (Formerly 6(a)(vi)) — The Department of Environmental Quality may appear~~
- 285 ~~and be represented by the Director or Administrator of the relative division, or by the Attorney~~
- 286 ~~General or his representative.~~
- 287
- 288 ~~—— (Formerly 6(a)(vii)) — Any party to a proceeding may appear and be~~
- 289 ~~represented therein by an attorney at law who is duly admitted to practice in Wyoming and an~~
- 290 ~~active member of the Wyoming State Bar. Any attorney who is not duly licensed to practice law~~
- 291 ~~in Wyoming shall not be entitled to enter his appearance in, prosecute or defend any action or~~
- 292 ~~proceeding pending before the Council unless he shall have associated with him in such action or~~
- 293 ~~proceeding an active member of the Wyoming State Bar.~~
- 294

(Formerly 6(a)(i-vii)) (a) A party, whether it be an individual, corporation, partnership, governmental organization, or other entity may appear through an attorney or representative. An individual may represent himself/herself. An individual or entity seeking to intervene in a contested case may appear prior to a ruling on the motion to intervene.

~~(Formerly 6(b)) Any person appearing in a proceeding before the Council shall conform to the recognized standards of ethical conduct.~~

(b) Prior to withdrawing from a contested case, an attorney shall file a motion to withdraw. The motion for an attorney's withdrawal shall include a statement indicating the manner in which notification was given to the client and setting forth the client's last known address and telephone number. The hearing officer shall not grant the motion to withdraw unless the attorney has made reasonable efforts to give actual notice to the client that:

(i) The attorney wishes to withdraw;

(ii) The client has the burden of keeping the hearing officer informed of the address where notices, pleadings, or other papers may be served;

(iii) The client has the obligation to prepare, or to hire another attorney or representative to prepare, for the contested case and the dates of proceedings;

(iv) The client may suffer an adverse determination in the contested case if the client fails or refuses to meet these burdens;

(v) The pleadings and papers in the case shall be served upon the client at the client's last known address; and

(vi) The client has the right to object within 15 days of the date of notice.

(c) Prior to withdrawing from a contested case, a representative shall provide written notice of withdrawal to the Council.

Section 9. ~~Subpoenas~~ Intervention.

(Formerly Section 7(a)) (a) Any person interested in obtaining the relief sought by a party or otherwise interested in the determination of a proceeding, ~~relating to~~ other than surface coal mining operations pending before the Council, may ~~petition for leave~~ file a motion for leave to intervene ~~in such proceeding prior to~~ before or at the ~~date of~~ hearing, but not thereafter except for good cause shown. The ~~petition~~ motion shall set forth the grounds of the proposed intervention, the position and interest of the petitioner in the proceeding, and ~~if~~ affirmative relief ~~is~~ sought, ~~the same should conform to the requirements for a formal petition.~~ Leave ~~will~~ shall not be granted unless the Council ~~shall~~ determines that the ~~party requesting to intervene~~ movant is adversely affected by the action and has a legal right to intervene, ~~has a legal right under the Environmental Quality Act or the Wyoming Administrative Procedure Act.~~

(Formerly 7(b)) (b) For proceedings related to surface coal mining operations, any person may ~~petition~~ file a motion for leave to intervene as a full party or ~~, if desired~~ in a limited capacity, at any stage of a proceeding conducted by the Council. The ~~petition~~ motion shall

include the basis for intervention and shall be granted to any person who either could have initiated the proceeding or has an interest ~~which~~that may be adversely affected by the outcome of the proceeding. Regardless of these bases, intervention may be granted whenever appropriate; after ~~consideration of~~considering the nature of the issues, the adequacy of the existing parties' representation of ~~petitioner's~~movant's interest, the ability of the ~~petitioner~~movant to present relevant evidence and argument, and the effect of intervention on the implementation of the Wyoming Environmental Quality Act. The extent and terms of participation by an intervenor in a limited capacity shall be determined by the Council.-

(Formerly 7(c)) (c) If ~~leave~~the motion to intervene is granted, the ~~petitioner~~movant becomes an intervenor and a party to the proceeding with the right to have notice, appear at the taking of testimony, produce and cross-examine witnesses, and be heard on the argument of the case. The party intervening shall give notice of intervention to all other parties.

~~(Formerly 7(d)) — The party intervening must give notice of such intervention to all other parties to the appeal.~~

Section 10. ~~Depositions~~ Ex Parte Communications.

~~(a) — In all contested areas coming before the Council, the taking of depositions and discovery shall be available to the parties and to the Council on its own motion in accordance with the provisions of W.S. 9-4-107(g).~~

~~(b) — The Council, for the purposes of allowing orderly presentation of evidence, may govern the conduct of discovery and the time limitations involved.~~

Except as authorized by law, a party or a party's attorney or representative shall not communicate with any Council member in connection with any issue of fact or law concerning any pending contested case, except upon notice and opportunity for all parties to participate. Should ex parte communication occur, the Council member shall advise all parties of the communication as soon as possible thereafter and, if requested, shall allow any party an opportunity to respond prior to ruling on the issue.

Section 11. ~~Witness Fees~~ Motions and Motion Practice.

~~(a) — Witnesses who are summoned before the Council are entitled to the same fees as are paid for like service in the District Courts of the State of Wyoming. Such fees shall be paid by the party at whose insistence the testimony was taken.~~

~~(formerly Section 3(a)) (a) The Council or presiding officer may, upon reasonable notice to all parties, hear orally, or otherwise, any motion filed in connection with hearings under these rules. Unless these rules or an order of the hearing officer establish time limitations other than those contained herein, all motions except motions for enlargement of time and motions made during hearing shall be served at least 10 days before the hearing on the motion. A party affected by the motion may serve a response together with affidavits, if any, at least three days before the hearing on the motion or within 20 days after service of the motion, whichever is earlier. Unless the hearing officer permits service at some other time, the moving party may serve a reply, if any, at least one day prior to the hearing on the motion or within 15 days after serving the response, whichever is earlier. Unless the hearing officer otherwise orders, any~~

393 party may serve supplemental memoranda or rebuttal affidavits at least one day prior to the
394 hearing on the motion.

395
396 (b) Unless the hearing officer otherwise orders, a request for a hearing on the motion
397 may be served by the moving party or any party affected by the motion within 20 days
398 after serving the motion. The hearing officer may act on the motion without a hearing.

399
400 (c) Prior to filing any non-dispositive motion, a party shall make reasonable efforts
401 to contact all other parties, representatives, and attorneys. Any such non-dispositive motion shall
402 include a statement concerning the party's efforts to confer with the other parties and positions on
403 the motion.

404
405 (d) All written motions filed with the Council shall be accompanied by a proposed
406 order.

407
408 Section 12. ~~Decision and Order~~ Setting Hearings and Other Proceedings.

409
410 ~~(a) The Council shall make a written decision and order in all cases, which decision~~
411 ~~shall contain findings of fact and conclusions of law based exclusively on the record and include~~
412 ~~the vote on the decision. The decision and order of the Council shall be placed in the record of the~~
413 ~~case which shall be retained by the Council.~~

414
415 ~~(formerly Section 2(a)) (a) When a hearing is instituted, The hearing officer or~~
416 ~~Chair of the Council, as applicable, it shall be assigned a docket number and entered with the~~
417 ~~date of its filing on a separate page of a docket provided for such purpose to each contested~~
418 ~~case. The Council shall establish a separate file for each such docketed case, in which shall~~
419 ~~be systematically placed all papers, pleadings, documents, transcripts, evidence and~~
420 ~~exhibits pertaining thereto, and all such items shall have noted thereon the docket number~~
421 ~~assigned, and the date of filing. All papers, pleadings, motions, and orders filed thereafter~~
422 shall contain:

423
424 (i) A conspicuous reference to the assigned docket number;

425
426 (ii) A caption setting forth the title of the contested case and a brief
427 designation describing the document filed; and

428
429 (iii) The name, address, telephone number, and signature of the person
430 who prepared the document.

431
432 (b) The hearing officer shall set the course of proceedings through the issuance of a
433 scheduling order. This may include, but is not limited to, pre-hearing conferences,
434 confidentiality issues, summary disposition deadlines, motion practice,
435 settlement conferences, and the evidentiary hearing.

436
437 (c) Prehearing conferences may be held at the discretion of the hearing officer. Any
438 party may request a prehearing conference to address issues such as discovery, motion
439 deadlines, scheduling orders, or case status.

440
441 (d) At the hearing officer's discretion and unless otherwise provided by the

Council, telephone or videoconference calls may be used to conduct any proceeding. At the discretion of the hearing officer, parties or their witnesses may participate in any hearing by telephone or videoconference.

Section 13. Consolidation.

~~(a) — The Council may, in its discretion, allow any pleadings to be amended or corrected, or any omission therein to be supplied.~~

A party may seek consolidation of two or more contested cases by filing a motion to consolidate in each case sought to be consolidated. If consolidation is ordered and unless otherwise ordered by the hearing officer, the cases shall be consolidated into the first case filed. All subsequent filings shall be in the case first filed, and all previous filings related to the consolidated cases shall be placed together under that docket number. Consolidation may be ordered on a hearing officer's own motion.

Section 14. ~~Applicability of Rule of Civil Procedure~~ Continuances, Extensions of Time, and Duty to Confer.

(a) A motion for a continuance of any scheduled hearing shall be in writing and state the reasons for the motion. A motion for a continuance shall be granted only upon a showing of good cause.

(b) A motion for an extension of time for performing any act prescribed or allowed by these rules or by order of the hearing officer shall be filed and served on all parties and the hearing officer prior to the expiration of the applicable time period. A motion for extension of time shall be granted only upon a showing of good cause.

(c) For contested cases conducted regarding objections pursuant W.S. 35-11-406(k), a motion for continuance may not be granted if the motion would continue the hearing beyond the 20-day period provided in that statute unless the parties stipulate to a different period.

Section 15. Discovery.

(a) The taking of depositions and discovery shall be in accordance with W.S. 16-3-107(g).

(b) Unless the hearing officer orders otherwise, parties shall not file discovery requests, answers, and deposition notices with the Council.

Section 16. Subpoenas.

~~Formerly Section 9(a)) Subpoenas requiring the attendance of witnesses from any place in the State of Wyoming at any designated place of hearing or for the production of books, papers, or other documents may be issued by the presiding officer upon written application of any party or upon motion of the presiding officer in accordance with the Wyoming Rules of Civil Procedure and Administrative Procedure Act.~~

~~(Formerly Section 9(a)(i)) — Items sought shall be set forth with particularity.~~

~~(Formerly Section 9(a)(ii)) — All subpoenas shall be served by personal delivery or by certified mail return receipt required, to the party served.~~

~~(Formerly Section 9(a)(iii)) Cost of the subpoenas shall be paid by the party requesting the service.~~

Any party may request the hearing officer to issue a subpoena to compel the attendance of a witness or for the production of documents. Requests for a subpoena shall be accompanied by a completed subpoena that conforms to Rule 45 of the Wyoming Rules of Civil Procedure.

Section 17. Prehearing Procedures.

(a) Unless otherwise ordered by the hearing officer, each party to a contested case shall file and serve on all other parties and the hearing officer a prehearing disclosure statement setting forth:

(i) A complete list of all witnesses who will or may testify, information on how each witness may be contacted, and a brief description of the testimony each witness is expected to give in the case. If a deposition is to be offered into evidence, the certified deposition shall be filed with the Council;

(ii) A statement of the specific claims, defenses, and issues that the party asserts are before the hearing officer for hearing, based on the party's initial filing;

(iii) A statement of the burden of proof to be assigned in the contested case, referring to specific regulatory, statutory, constitutional, or other authority established by relevant case law;

(iv) A statement of stipulated facts. If the parties are unable to stipulate to facts, the parties shall indicate what efforts have been made to stipulate to facts and the reasons facts cannot be stipulated;

(v) A complete list of all evidence that a party will or may introduce into evidence and copies of all documentary evidence that the party will or may introduce; and

(vi) An approximation of the time required for the hearing.

(b) Parties shall file and serve prehearing disclosure statements on or before the date established by the hearing officer through the scheduling order.

(c) The information provided in a prehearing disclosure statement shall be binding on each party throughout the course of the contested case unless modified for good cause.

(d) Additional witnesses or exhibits may be added only if the need to do so was not reasonably foreseeable at the time of filing of the prehearing disclosure statement, it would not unfairly prejudice other parties, and good cause is shown.

(e) The hearing officer may modify the requirements of a prehearing disclosure

540 statement.

541
542 (f) Failure to file a prehearing disclosure statement may result in the hearing officer
543 excluding witnesses, exhibits, claims and defenses, or dismissing the contested case.

544
545 (g) If a prehearing order is entered, the prehearing order shall control the
546 course of the hearing.

547
548 Section 18. **Burden of Proof.**

549
550 The hearing officer shall assign the burden of proof in accordance with applicable
551 law.

552
553 Section 19. **Evidence.**

554
555 (a) The hearing officer shall rule on the admissibility of evidence in accordance
556 with the following:

557
558 (i) Evidence of the type commonly relied upon by reasonably prudent
559 persons in the conduct of their serious affairs shall be admissible. Irrelevant, immaterial, or
560 unduly repetitious evidence may be excluded.

561
562 (ii) Evidence may be offered through witness testimony or in
563 documentary form;

564
565 (iii) Testimony shall be given under oath administered by the hearing
566 officer. Deposition testimony and other pre-filed testimony may be submitted as evidence,
567 provided the testimony is given under oath administered by an appropriate authority, and is
568 subject to cross-examination by all parties;

569
570 (iv) The rules of privilege recognized by Wyoming law shall be given
571 effect; and

572
573 (v) A hearing officer may take administrative notice of judicially
574 cognizable facts, provided the parties are properly notified of any material facts noticed.

575
576 (b) Each party shall have the opportunity to cross-examine witnesses. The
577 hearing officer may allow cross-examination on matters not covered on direct examination. Each
578 party shall have the opportunity to perform re-direct examination of witnesses on matters
579 covered during cross-examination.

580
581 (c) The hearing officer or Council member, when applicable, may ask questions of
582 any party or witness.

583
584 Section 20. **Contested Case Hearing Procedure.**

585
586 (a) The hearing officer shall conduct the contested case and shall have discretion to
587 direct the order of the proceedings.

(b) Unless otherwise provided by law, and at the hearing officer's discretion, the party with the burden of proof shall be the first to present evidence. All other parties shall be allowed to cross-examine witnesses in an orderly fashion. When that party rests, other parties shall then be allowed to present their evidence. Rebuttal and surrebuttal evidence shall be allowed only at the discretion of the hearing officer.

(c) The hearing officer shall have discretion to allow opening statements and closing arguments.

Section 21. Default.

Unless otherwise provided by law, a hearing officer may enter an order of default or an order affirming agency action for a party's failure to appear at a lawfully noticed hearing. Where a contested case has due process implications, a hearing officer may not enter judgment before the agency presents a prima facie case.

Section 22. Expedited Hearing.

(a) At the hearing officer's or Council's discretion and when allowed by applicable law, a contested case may be heard as an expedited hearing upon the motion of any party.

(b) An expedited hearing shall be decided on written arguments, evidence, and stipulations submitted by the parties. A hearing officer or hearing panel may permit oral arguments upon the request of any party.

(c) The hearing officer may require an evidentiary hearing in any case in which it appears that facts material to a decision in the case cannot be properly determined by an expedited hearing.

Section 23. Recommended Decision.

In those contested cases where the hearing officer makes a recommended decision, the hearing officer shall file the recommended decision with the Council and serve copies of the recommended decision on all parties to the contested case. Unless otherwise ordered, parties must file written exceptions to the hearing officer's recommended decision within 10 days of the recommended decision being filed. Written exceptions shall be filed with the Council and served on all parties.

Section 24. Final Decision.

(a) A final decision containing findings of fact, conclusions of law, and an order entered by the Council shall be in writing and served upon all parties to the contested case and the hearing officer, if applicable.

(b) A final decision shall include findings of fact and conclusions of law, separately stated. When the hearing officer allows the parties to submit a proposed final order, the parties shall file the original with the Council and serve copies of the proposed order on all other parties and the hearing officer.

638 (c) At any time prior to judicial review, a hearing officer may correct clerical errors
639 in final decisions or other parts of the record. A party may move that clerical errors or
640 other parts of the record be corrected. During the pendency of judicial review, such errors may
641 be corrected only with leave of the reviewing court.

642
643 **Section 25. Incorporation by Reference.**

644
645 (a) These rules incorporate by reference Rules 4, 12(b)(6), 24, 45, 52, 56, and 56.1
646 of the Wyoming Rules of Civil Procedure, as in effect on July 1, 2016, available at
647 <http://www.courts.state.wy.us/WSC/CourtRule?RuleNumber=48>;

648
649 (b) These rules do not incorporate later amendments or editions of the incorporated
650 matter.

651
652 (c) All incorporated matter is available for public inspection at the Department's
653 Cheyenne office. Contact information for the Cheyenne Office may be obtained at
654 <http://deq.wyoming.gov> or from (307) 777-7937.
655